

REMARKS:

Claims 1, 2, 4-11, 13, 16, 18, 19, 24, 27, 28, 30-37, 39, 43, 45, 46, 51 and 104-107 are presented for examination. Claims 1, 27, 104 and 106 have been amended hereby. Claims 3, 12, 14, 15, 17, 20-23, 25, 26, 29, 38, 40-42, 44, 47-50, 52-103 and 108-111 have previously been withdrawn (without prejudice or disclaimer).

Reconsideration is respectfully requested of the rejection of claims 1, 2, 4-11, 13, 16, 18, 19, 24, 27, 28, 30-37, 39, 43, 45, 46, 51 and 104-107 under 35 U.S.C. §103(a) as allegedly being unpatentable over WO 98/12243, hereinafter “Jarrett et al.” in view of U.S. Patent 6,258,778, hereinafter “Rodgers et al.”.

Initially, it is noted that applicants do not necessarily concur with the Examiner with regard to the Examiner’s analysis of claims 1, 2, 4-11, 13, 16, 18, 19, 24, 27, 28, 30-37, 39, 43, 45, 46, 51 and 104-107 and the Jarrett et al. and Rodgers et al. disclosures.

For example, each of independent claims 1, 27, 104 and 106 had recited (even before amendment hereby) that “the osteotherapeutic material is demineralized bone matrix”.

In partially acknowledging this claimed feature, the Examiner had indicated at page 4 of the August 8, 2007 Office Action (as a precursor to citing Rodgers et al. as the secondary reference) that “the carrier composition of Jarret does not contain osteotherapeutic material”.

Whether or not the material in the carrier composition of Jarrett et al. would actually be viewed as “osteotherapeutic”, it does appear that the carrier composition of Jarret does not contain osteotherapeutic material of demineralized bone matrix (as claimed).

In fact, an electronic word search of the Jarrett et al. reference was undertaken, and the reference does not appear to even include the terms “DBM” or “demineralized bone matrix”.

Moreover, it is respectfully submitted that Rodgers et al., which was apparently cited for its disclosure related to bone morphogenic protein, does nothing to cure this deficiency of Jarrett et al. with regard to demineralized bone matrix.

In this regard, an electronic word search of the Rodgers et al. reference was likewise undertaken, and the reference again does not appear to even include the terms “DBM” or “demineralized bone matrix”.

Thus, it is respectfully submitted that even if the Jarrett et al. and Rodgers et al. references were combined as suggested by the Examiner, the resulting hypothetical combination would still fail to result in the claimed invention, wherein the osteotherapeutic material is demineralized bone

matrix.

The above discussion was directed to at least one feature distinguishing the invention (as claimed - even before amendment hereby) from the Jarrett et al. and Rodgers et al. references.

Nevertheless, in an effort to expedite prosecution of the application, each of independent claims 1, 27, 104 and 106 has been amended hereby to even further distinguish over the Jarrett et al. and Rodgers et al. disclosures.

In particular, each of independent claims 1, 27, 104 and 106 has been amended hereby to recite:

- “wherein a weight of the demineralized bone matrix ranges from about 52% to about 87% of a combined weight of the demineralized bone matrix plus the macromer” (emphasis added)

It is respectfully submitted that the specific weight percentages indicated above further distinguish the claimed invention because, as best understood, the Jarrett et al. reference relates to drug delivery. It is well known in the drug delivery art to provide an active ingredient at a much lower level than claimed.

That is, while the claims now recite that the demineralized bone matrix (acting in this case as the “active ingredient”) ranges from about 52% to about 87% of a combined weight of the demineralized bone matrix plus the macromer, Jarrett et al. relates to drug delivery, and it is well known in that art to provide the active ingredient at a much lower level. Thus, it would follow that the active ingredient of Jarrett et al. would be provided at a level outside of the claimed range.

Therefore, it is respectfully submitted that the rejection of claims 1, 2, 4-11, 13, 16, 18, 19, 24, 27, 28, 30-37, 39, 43, 45, 46, 51 and 104-107 under 35 U.S.C. §103(a) as allegedly being unpatentable over Jarrett et al. in view of Rodgers et al. has been overcome.

Accordingly, it is respectfully submitted that the rejection raised by the Examiner in the August 8, 2007 Office Action has been overcome and that the above-identified application is now in condition for allowance.

Additionally, it is noted that this Amendment is fully supported by the originally filed application and thus, no new matter has been added. For this reason, the Amendment should be entered.

For example, support for the amendments to claims 1, 27, 104 and 106 regarding a weight of

the demineralized bone matrix ranging from about 52% to about 87% of a combined weight of the demineralized bone matrix relative to a weight of the demineralized bone matrix plus the macromer may be found in Table 2 and the immediately preceding paragraph discussing Examples 8 through 12, and throughout the specification.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,
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